

[6th August 1954]

APPENDIX IX.

[Vide item (VI) on page 41 supra.]

REPORT OF THE JOINT SELECT COMMITTEE ON
THE MADRAS HINDU RELIGIOUS AND CHARIT-
ABLE ENDOWMENTS (AMENDMENT) BILL, 1954
(L.A. BILL No. 27 OF 1954).

To

THE HONOURABLE THE LEGISLATIVE ASSEMBLY,
MADRAS.

The Joint Select Committee appointed to consider the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), has the honour to make the following report.

2. The Bill was published in English in an Extraordinary issue of the *Fort St. George Gazette*, dated the 14th May 1954, and in Tamil, Telugu, Malayalam, Kannada and Hindustani in the *Fort St. George Gazette*, dated the 26th May 1954.

3. The Joint Select Committee was appointed by resolutions of the Assembly, dated 18th May 1954 and 19th May 1954, and of the Council, dated 18th May 1954.

4. The Joint Select Committee met in the Council Chamber at Fort St. George on the 2nd July 1954 and in the Committee Room at Fort St. George on the 3rd July 1954, for the consideration of the provisions of the Bill.

5. In a recent decision, the Supreme Court held that some of the sections of the Madras Hindu Religious and Charitable Endowments Act, 1951, were invalid, as being repugnant to the Constitution. The present Bill seeks to amend the said Act so as to meet the objections stated by the Supreme Court and make the provisions of the Act conform to the Indian Constitution.

6. The Committee has subjected the provisions of the Bill to a careful scrutiny, but has not found it necessary to make any serious changes therein.

Clause 5.

7. This clause seeks to omit sub-section (2) of section 30 of the principal Act. The Committee thinks that the total omission of the sub-section is not called for and that it would be sufficient if for the words "the Trustee shall be guided by" in the sub-section, the words "the Trustee shall have due regard to" be substituted, so as to make it clear that the instructions of the Commissioner are not intended to fetter the discretion of the trustee.

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Clause 9.

8. This clause proposes to substitute a new sub-section for the existing sub-section (2) of section 39. Under this proposed new sub-section, the Commissioner is authorized to appoint under certain circumstances non-hereditary trustees to any institution having hereditary trustees. After due consideration, the Committee has resolved—

(1) that for the words “efficiently managed”, the words “properly managed” should be substituted;

(2) that the reasons (a), (b) and (c) given in the sub-section should be deleted but that provision should be made requiring the Commissioner to give reasons for his decision to appoint non-hereditary trustees; and

(3) that a provision should also be made allowing an appeal to a Court of Law from his decision.

The clause has accordingly been suitably amended and a consequential change made in the Schedule to the Act.

Clause 10.

9. This clause deals with the grounds on which a suit may be instituted for the removal of the trustee of a Math or specific endowment attached to a Math. The Committee resolved that for the proposed ground (h) which reads as follows, namely, “leading a life inconsistent with the sanctity attached to the office of the head of the Math”, the following should be substituted:—

“leading an immoral life or otherwise leading a life which is likely to bring the office of the head of a Math into contempt.”

10. The Committee thinks that sub-section (2) proposed to be added to section 23 of the Act by clause 4 should be a separate section by itself and it has also agreed to certain other amendments of a verbal or drafting character. All the amendments agreed to by it are shown in the copy of the Bill annexed.

11. Sri M. Kalyanasundaram, Sri T. Anantha Pai and Sri K. Balasubramania Ayyar have given dissenting minutes to certain clauses and they are appended to this report.

12. As the Committee has not appreciably amended the provisions of the Bill, it considers that the Bill as amended by it need not be republished.

B. PARAMESWARAN,
Chairman.

GOVERNMENT ESTATE,
MOUNT ROAD, MADRAS,
12th July 1954.

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ANNEXURE.

Note.—The changes made are sidelined or underlined and the portions omitted are indicated by dots.

L.A. Bill No. 27 of 1954.

A Bill to amend the Madras Hindu Religious and Charitable Endowments Act, 1951.

WHEREAS it is expedient to amend the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951), for the purposes hereinafter appearing :

BE it enacted in the Fifth Year of Our Republic as follows :—

1. *Short title.*—This Act may be called the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954.

2. *Amendment of sections 10 and 11, Madras Act XIX of 1951.*—In section 10, sub-section (2), and section 11, sub-section (3), of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951) (hereinafter referred to as the principal Act), the figure “ 56 ” shall be omitted.

3. *Substitution of new section for section 21 in Madras Act XIX of 1951.*—For section 21 of the principal Act, the following section shall be substituted, namely :—

“ 21. *Power to enter religious institution.*—(1) The Commissioner, Deputy Commissioner, Assistant Commissioner or such officers or servants of a religious institution as may be authorized by the Commissioner, Deputy Commissioner or Assistant Commissioner in this behalf, shall have power to enter the premises of any religious institution or any place of worship for the purpose of exercising any power conferred, or discharging any duty imposed, by or under this Act.

(2) If any such officer or servant is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer or servant, direct any police officer not below the rank of Sub-Inspector to render such help as may be necessary to enable the officer or servant to exercise such power or discharge such duty.

(3) In entering the premises of a religious institution or place of worship, the person authorized by or under sub-section (1) or the police officer referred to in sub-section (2) shall, if practicable, give notice to the trustee and shall have due regard to the practices and usages of the institution.”

4. *Insertion of new section 21-A in Madras Act XIX of 1951.*—After section 21 of the principal Act, the following shall be inserted as section 21-A, namely :—

“ 21-A. *Commissioner, etc., to observe appropriate forms and ceremonies.*—The Commissioner, Deputy Commissioner, Assistant Commissioner, every member of an Area Committee

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and every other person exercising powers of superintendence or control under this Act, shall, so far as may be, observe forms and ceremonies appropriate to the religious institution in respect of which such powers are exercised and, in the case of a math, act in conformity with the usages of the math in his dealings with the head of the math."

5. *Amendment of section 30, Madras Act XIX of 1951.*—In section 30, sub-section (2), of the principal Act, for the words "the trustee shall be guided by", the words "the trustee shall have due regard to" shall be substituted.

6. *Substitution of new section for section 31, Madras Act XIX of 1951.*—For section 31 of the principal Act, the following section shall be substituted, namely:—

"31. *Cypres application of surplus funds of endowments.*—(1) The Commissioner may, after holding an enquiry in such manner as may be prescribed, by order, declare that, after satisfying adequately the purposes of the religious institution and after setting apart a sufficient sum for the repair and renovation of the buildings connected with the math or temple or the endowments attached thereto, there is a surplus which is not required for any such purpose, and may, by such order, direct that the amount of the endowment or such surplus as is declared to be available, as the case may be, be appropriated to religious, educational or charitable purposes:

Provided that, in the case of a temple founded and maintained by a section of the Hindu community, the amount of the endowment or the surplus shall, as far as possible, be utilized for the benefit of the said section for the purposes mentioned above.

(2) It shall be competent to the Commissioner when giving a direction under sub-section (1) to determine what portion of such surplus shall be retained as a reserve fund for the math or temple and to direct the remainder to be appropriated to the purposes specified in that sub-section.

(3) The Commissioner may, at any time, by order and in the manner provided in sub-section (1), modify or cancel an order passed under that sub-section.

(4) The order of the Commissioner under this section shall be published in the prescribed manner. The trustee or any other person having interest may, within six months of the date of such publication, institute a suit in the Court to modify or set aside such order.

Subject to the result of such suit, and of the appeal, if any, under section 31-B, the order of the Commissioner shall be final and binding on the trustee and all persons having interest.

(5) Any decision of the Court under this section may, at any time, for sufficient cause, be modified or cancelled by the Court in a suit instituted by the Commissioner or the trustee or any person having interest but not otherwise."

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7. Insertion of new sections 31-A and 31-B in Madras Act XIX of 1951.—After section 31 of the principal Act, the following sections shall be inserted, namely :—

“ 31-A. Validation of past appropriation of surplus funds.—(1) Where, in the exercise of powers purported to be conferred by section 31, before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, the trustee of a religious institution has, with the previous sanction in writing of the Deputy Commissioner, directed the appropriation of funds belonging to the institution to any of the purposes specified in section 59, sub-section (1), such direction shall be deemed to be a direction made in pursuance of an order passed by the Commissioner under section 31 as amended by the said Amendment Act; and any order passed by the Commissioner or by the Government in relation to such direction made by the trustee shall be void and of no effect.

(2) Any person having interest may, within six months from the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, institute a suit in the Court to modify or set aside the direction made by the trustee and for such further or other relief in relation to funds appropriated, or acts done, in pursuance of the direction made by the trustee, as the nature of the case may require.

31-B. Appeals.—Any person aggrieved by a decision of the Court under section 31 or section 31-A may, within ninety days from the date of the decision, appeal to the High Court.”

8. Amendment of section 34, Madras Act XIX of 1951.—In section 34, sub-section (8) of the principal Act, for the words “ who is dedicated to a temple ”, the words “ who is dedicated for service in a temple ” shall be substituted.

9. Amendment of section 39, Madras Act XIX of 1951.—In section 39 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely :—

“ (2) Where, in the case of any such institution having a hereditary trustee or trustees, the Commissioner, after notice to such trustee or trustees and after such inquiry as he deems adequate, considers, for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, the Commissioner may, by order, appoint such number of non-hereditary trustees as he thinks necessary, so however that the total number of trustees does not exceed five.”

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(b) in sub-section (3), for the words, brackets and figures " Every trustee appointed under sub-section (1) or sub-section (2) ", the words, brackets and figures " Every trustee appointed under sub-section (1) and, subject to the result of an application, if any, filed under sub-section (4), every non-hereditary trustee appointed under sub-section (2) " shall be substituted.

(c) after sub-section (3), the following sub-sections shall be added, namely :—

" (4) Where the Commissioner, by order, appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the Court to set aside or modify such order.

(5) Where a vacancy arises in the office of a non-hereditary trustee appointed under sub-section (2), the Commissioner shall not fill up such vacancy unless, for reasons to be recorded, he considers it necessary to do so. A non-hereditary trustee appointed in the vacancy shall be deemed to have been appointed under sub-section (2), and the provisions of sub-sections (3) and (4) shall apply accordingly."

Amendment of section 52, Madras Act XIX of 1951.—In section 52, sub-section (1), of the principal Act, clause (f) shall be re-lettered as clause (i), and before the clause as so re-lettered, the following clauses shall be inserted, namely :—

" (f) waste of the funds or properties of the institution or the application of such funds or properties for purposes unconnected with the institution;

(g) the adoption of devices to convert the income of the institution or of the funds or properties thereof into ' pathakanika ' ;

(h) leading an immoral life or otherwise leading a life which is likely to bring the office of head of the math into contempt ".

Substitution of new section for section 55, Madras Act XIX of 1951.—For section 55 of the principal Act, the following section shall be substituted, namely :—

" 55. *Power to spend ' pathakanika '.*—The trustee of a math shall keep regular accounts of receipts of ' pathakanika ', that is to say, any gift of property made to him as the head of the math and shall be entitled to spend the said ' pathakanika ' in accordance with the customs and usages of the institution."

12. *Repeal of section 56, Madras Act XIX of 1951.*—Section 56 of the principal Act shall be omitted.

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13. Substitution of new section for section 67 in Madras Act XIX of 1951.—For section 67 of the principal Act, the following section shall be substituted, namely :—

“ 67. *Term of office and duties of executive officer.*—(1) The executive officer shall hold office for such period as may be fixed by the Commissioner and he shall exercise such powers and perform such duties as may be assigned to him by the Commissioner :

Provided that only such powers and duties as appertain to the administration of the endowments of the religious institution shall be assigned to the executive officer.

(2) The Commissioner shall define the powers and duties which may be exercised and performed respectively by the executive officer and the trustee, if any, of the religious institution.

(3) The executive officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive officer.”

14. Substitution of new sections for sections 68 and 69 in Madras Act XIX of 1951.—For sections 68 and 69 of the principal Act, the following sections shall be substituted, namely :—

“ 68. *Section 58 not to apply to notified institutions.*—(1) Section 58 shall not apply to, and no Area Committee shall have jurisdiction over, any religious institution notified under this Chapter or under Chapter VI-A of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), so long as the notification remains in force.

(2) Nothing in sub-section (1) shall be construed as prohibiting the framing of a scheme under section 58 during the period when a notification is in force, to take effect immediately on the notification ceasing to be in force.”

69. *Saving.*—Nothing in this Chapter shall apply to maths or other religious institutions having hereditary trustees who have a beneficial interest in the income of the institution.”

15. Amendment of section 76, Madras Act XIX of 1951.—In section 76 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely :—

“(1) In respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding five percentum of its income as may be prescribed,

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(2) Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine."

16. Insertion of Chapter IX in Madras Act XIX of 1951.—After Chapter VIII of the principal Act, the following Chapter shall be inserted, namely:—

“ CHAPTER IX.

ENDOWMENTS ADMINISTRATION FUND.

80. *Commissioner to be corporation sole.*—The Commissioner shall be a corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name.

81. *Religious and Charitable Endowments Administration Fund.*—(1) There shall be established a Fund to be called the Madras Hindu Religious and Charitable Endowments Administration Fund. The Fund shall vest in the Commissioner.

(2) The contributions payable under section 76 (1) and the further sums payable under section 76 (2) shall, when realized, be credited to the said Fund. It shall be lawful for the Commissioner to accept to the credit of the said Fund grants or loans from the Government and grants from any private person. The Commissioner shall, out of the said Fund, repay to the Government sums paid by the Government under section 76 (4) and loans received from the Government.

82. *Validation of contributions levied.*—(1) Contributions under section 76 (1) and further sums under section 76 (2) shall be payable with effect from the commencement of this Act. For the period from the commencement of this Act until the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, the rate prescribed by the Government under section 76 (1), or determined by the Commissioner under section 76 (2), shall be deemed to be the rate prescribed or determined under section 76 (1) or section 76 (2), as the case may be, as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, and contributions and further sums paid to the Government shall be deemed to be contributions and further sums, as the case may be, paid to the Commissioner under section 76 (1) and section 76 (2) as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954.

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(2) The Government shall pay to the Commissioner the balance, if any, remaining out of the aggregate of the contributions and further sums paid or realized before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, in pursuance of section 76 (1) and section 76 (2), after deducting therefrom sums paid by the Government under section 76 (4)."

17. Amendment of section 87, Madras Act XIX of 1951.—
In section 87 of the principal Act—

(a) the words and figures " as manager under section 56 or " occurring at the commencement of clause (c) shall be omitted; and

(b) for the words " any Magistrate of the first class ", the words " any Presidency Magistrate or any Magistrate of the first class " shall be substituted.

18. Amendment of section 89, Madras Act XIX of 1951.—
In section 89, sub-section (4), of the principal Act, the following shall be added at the end, namely:—

" The Commissioner shall pay to the Government any sum so accepted."

19. Amendment of section 103, Madras Act XIX of 1951.—
In section 103, clause (i), of the principal Act, for the words " payable to the Government ", the words " payable to the Commissioner " shall be substituted.

20. Amendment of Schedule I, Madras Act XIX of 1951.—
In Schedule I to the principal Act—

(1) under the heading " I. Suits ", before the entry relating to section 52, the following shall be inserted, namely:—

" 31. (4) Suits against order of the Commissioner 50

31 (5) Suits to set aside or modify Court's order 50

31-A (2) Suits to modify or set aside direction of trustee 50 "

(2) Under the heading " II. Applications to Court ", before the entry relating to section 62 (3) (a), the following shall be inserted, namely:—

" 39 (4) Application to Court against order of the Commissioner 10 "

(3) under the heading " III. Appeals to Court ", in column (1), before the figures, brackets and letter " 62 (2), 62 (3) (b) ", the figures and letter " 31B " shall be inserted;

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(4) under the heading " V. Appeals to Government, Commissioner, Deputy Commissioner or Trustee ", the figures and brackets " 31 (2) " in column (1) and the entries relating thereto shall be omitted.

R. V. KRISHNA AYYAR,
Secretary to the State Legislature.

GOVERNMENT ESTATE,
MOUNT ROAD, MADRAS,
12th July 1954.

APPENDIX.

DISSENTING MINUTES.

With regard to clause No. 12 of the Hindu Religious and Charitable Endowments Bill, 1954, I am against totally repealing this section 56 of the Madras Act XIX of 1951 which empowers the Commissioner to appoint a Manager to look after the secular affairs of a math. In my view this power for causing a manager to be appointed is necessary to act as a check on the trustees against possible indifference to the proper management of the properties in the interest of the math. If the judgment of the Supreme Court is read carefully, it will be understood that the Supreme Court is not against appointment of managers under all circumstances. The judgment is only a suggestion to modify section 56 of the original Act so as to prevent any arbitrary use of the powers by the Commissioner. I therefore suggest that instead of repealing the section totally, it may be modified on the following lines:—

" If the Commissioner has reason to believe that the property of trust funds of the math are mismanaged or are used for purposes other than the purposes of the math and is satisfied that it is necessary in the interests of their administration to take action under this section, he may require the trustee to appoint a competent person as manager and in default of such appointment, the Commissioner may himself make the appointment. The Manager so appointed shall not be liable to be punished or removed from office without the consent of the Commissioner."

MADRAS,
3rd July 1954.

M. KALYANASUNDRAM.

II

1. *Clause 11.*—While I support the amendment requiring the heads of maths to maintain at least accounts of receipt I am of opinion that suitable provision must be made for treating all amounts of personal gifts as properties of the religious institution concerned because these personal gifts are given only to the post and not to the person.

2. *Clause 15.*—Regarding contributions to be collected from the religious institutions for the cost of services, the Commissioner must be entitled to spend the surplus, if any, for any charitable or educational purposes.

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Further I am of opinion that the 5 per cent of contribution is not sufficient to meet the full cost of the services. Already the Government servants of all categories are underpaid and they are agitating for increasing their emoluments in every respect. The Government will be compelled to consider these just demands to some extent in the near future. In case it happens, there should be provision for meeting the increased expenditure.

Therefore I propose that the percentage of contribution from the religious institutions must be increased to at least $7\frac{1}{2}$ per cent excluding the fees charged for audit purposes.

MADRAS,
3rd July 1954.

M. KALYANASUNDRAM.

III

The object of amending the Madras Hindu Religious and Charitable Endowments Act of 1951 is to rectify certain sections of the Act now held invalid as being repugnant to the Constitution by the Supreme Court. In doing so, I am afraid, the Government have concerned themselves only with the changing of the words here and a section there without entering into the spirit of the findings of the Supreme Court.

There are no two opinions regarding the necessity for a certain amount of control over the endowments, religious or otherwise; and where the endowments are of a religious nature, it is indeed necessary to see that the purposes for which the endowments were created by the donors are in effect carried out.

I am happy that the Government have given an assurance at the Select Committee stage that the question of covering the entire ground and the provisions of the Act would be gone into and a separate committee in due course would be appointed for the purpose, thus agreeing with our view point that there is a case for it.

In the case of religious endowments, I am of opinion that a department of the Government like the present Hindu Religious Endowments Commissioner would be a hardly competent authority to administer these endowments in conformity with the sentiments of the people, religious or otherwise. I feel it would be therefore very desirable to constitute a separate Board in the place of the present department for administering these religious endowments, consisting of eminent Hindu scholars nominated by the Government and also the representatives of the various interests like the matadhipathis and temples. Such a statutory Board alone would be competent to satisfy the aspirations of the people in these matters without jeopardising the secular nature of our State.

A matadhipathi cannot be treated in the same way as any other trustee. He happens to be the spiritual head with a considerable following and prestige in many cases, and held in high esteem and regard in several instances; and the property that is attached to the office is very often for the purpose of effective discharge of his functions as a spiritual head. If he is divested of the control over the properties, his capacity to discharge his obligations as a spiritual head will be rendered ineffective. Whether many of the matadhipathis are discharging such functions properly in effect is a different point altogether. In having

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effective control only over the assets and without being able to enforce positively that he discharges his functions as a spiritual head, the Government will be showing only a negative attitude to the problem. I therefore feel that the matter must be to a large extent left to the followers of the swamiars in deciding what kind of life the swamiars should lead rather than prescribe limitations regarding their conduct. Under the Indian Trusts Act, a trustee is incapacitated to act as a trustee on certain grounds. I do not think it fair to have additional grounds in the case of matadhipathis for their removal from trusteeship.

Section 58 of the Madras Act XIX of 1951 provides enough powers for framing schemes where it is apprehended that the trustee is not discharging his functions or where he has failed to discharge them properly; and to provide for additional grounds in the present Bill under clause 10 seems to me to be unnecessary and vexatious.

Under clause 4 of the Bill, I am glad that in conformity with the assurance given to the President of India it has been provided that forms and ceremonies appropriate to the religious institutions should be observed and in the case of maths, the Commissioner shall act according to the usages of the math in his dealing with the head of the math. In the past the department has provided a few instances where the spirit of the law was completely overlooked offending the sentiments of a large number of people. I do hope that in the exercise of the powers under this Act, the department would do nothing to offend the sentiments of the people.

Regarding the application of cypres doctrine in the matter of surplus funds under clause 6 to leave the discretion entirely to the Commissioner regarding the surplus is not advisable. In the case of some maths, the surplus might be necessary, for instance, for the propagation of the religious tenets of the math and where the Government finds that a particular institution utilizes this surplus for the purpose, I do not think it desirable that it should interfere. The Government is only concerned to see that the matadhipathi does not use it for his personal purpose. Where the maths are already maintaining certain educational and other charitable institutions, I am afraid it would not be possible for them to do so in future as the Commissioner might entirely disagree with the trustee regarding the utilization of the surplus. I do feel that the wishes of the trustee regarding disposal of the surplus have to be respected. No doubt it has been provided that an aggrieved person can appeal on the decision of the Commissioner, but it would not be desirable to encourage litigation for the purpose.

In the matter of padakanikas, the Supreme Court has held that excepting where usage requires it to be treated otherwise padakanikas are to be treated as the absolute property of the matadhipathi. While there may be justification for control over the endowments, any control over the padakanikas is not justified. People give padakanikas nowadays with open eyes and the amount of padakanika that any particular matadhipathi will get in future will entirely depend on the respectability and regard he is able to evoke in his followers. While ordinarily there should not be any objection to the maintenance of accounts, both regarding the receipts and expenditure, the purpose for which

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we want them to maintain accounts statutorily of the receipts only, namely, to find out whether they had converted any property of the math into padakanika would mean that in practice this provision may lead to considerable harassment.

In the case of Udipi maths, the eight maths of Udipi founded by Sri Madhwacharya will have to be treated as one unit along with the Krishna math. It would have been very desirable to have a separate arrangement to bring them under the purview of the Act. They have their peculiarities. In arriving at the surplus of any of them, it is absolutely necessary to take into account the obligation on each of them to conduct paryayam at a huge cost once in sixteen years. In fact their budgets drawn from year to year will not give a correct picture for the reason and I do hope the department will give due regard to this aspect of the question in dealing with them and in arriving at their surplus.

UDUPI,
12th July 1954.

T. ANANTA PAI.

IV

I regret that I am unable to agree with the majority as regards certain clauses of the proposed Bill and amendments to certain clauses of the Bill. The Madras Hindu Religious and Charitable Endowments Amendment Bill, 1954, is sought to be introduced in consequence of the decision of the Supreme Court, holding certain sections of the Madras Hindu Religious and Charitable Endowments Act XIX of 1951 are invalid as being repugnant to the Constitution. The object of this Bill is to amend the Act XIX of 1951 in conformity with the provisions of the Constitution. But the present Bill contains certain sections which are not consequential on the decision of the Supreme Court. They are in the nature of fresh proposals, such as, clause (6) introducing a new section 31 in place of old section 31 of the Madras Act of 1951 and section 82 in clause 18. The new section 31 is headed "cypres application of surplus funds of endowments." This is wrong. The new section deals with the existing institutions and does not deal with religious institutions, whose purposes have from the beginning been or have subsequently become impossible of realization, which are dealt with by section 59 of Act XIX of 1951. In other words, it does not deal with religious trusts, which have failed. To such existing trusts, the well-known doctrine of cypres does not apply. The section gives power to the Commissioner directly to decide that any surplus which is not required for the purposes of the institution may be appropriated to religious, educational or charitable purposes. The Hindu religious institutions, such as maths and temples, have been founded by various religious denominations of the Hindus for the promotion, propagation and practice of the religion and religious tenets of these denominations and the endowments that have been made during all these centuries to these institutions are only for the purpose of conducing to the realization of this object. It is not right and proper that any funds of these institutions should be appropriated to other religious, educational or charitable purposes. It will be really a diversion of the funds. The section does not make any difference between the annual

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income or the capital of these endowments. According to the decision of the Supreme Court in the case of the math, the matadhipathi has absolute power of disposal over the income of all the endowments and he can spend at his discretion such income for purposes connected with the institution. The proposed section will fetter the discretion of the matadhipathi and vest it in the Commissioner. There may be religious, educational or charitable purposes which are wholly unconnected with the object of these endowments. It will not also be right to state that there can be a surplus which is not required for such purpose. The work to be done in connection with the promotion, propagation and practice of the religion and the religious tenets of the various denominations is so vast and is becoming increasingly wider on account of the present day conditions that it will be hardly right on the part of any Commissioner to come to a decision that there is a surplus which is not required for this purpose. It will not be proper for the statute to contemplate the possibility of such a surplus. In fact on account of the various reasons, which everybody knows it has become increasingly necessary that there should be countrywide propaganda for the proper understanding and realization of the truths and tenets of the Hindu religion and of the various denominations comprised in it. It is also not proper to give to the Commissioner such a wide power and taking out of the trustees of these religious endowments the entire discretion to decide about it. The section proceeds on a wholly unjustified faith in the officers of Government and on equally unjustified distrust in the trustees of temples and heads of maths. If here and there there is a dereliction of duty on the part of the trustees of these institutions, it does not follow that there should be a distrust of all trustees nor such will it follow that all officers of Government will do their duties quite properly and judiciously. The whole section is opposed to the spirit of the Constitution, especially Articles 25 and 26 which give the fundamental rights of religious autonomy to the various religious denominations in our country.

2. Section 82 validates the levy of contributions made or payable before the coming into effect of this Bill. This is quite illegal. The Supreme Court has held that the State Legislature has no power to enact that the contributions should be paid by religious institutions under section 76 of the Act XIX of 1951, as they are in the nature of a tax and not a fee. Therefore, the contribution levied or any arrear of contribution payable under section 76 of the Act of 1951 is illegal and cannot now be validated. The amount of contribution due cannot be called an arrear legally payable and the contribution already levied is an illegal exaction. Any validation in respect of the contribution levied or payable will nullify the effect of the Supreme Court decision and will be against the Constitution, especially the Article 265, which says that no tax shall be levied or collected except by authority of law and the Supreme Court has held that the contribution levied are payable as a tax and no law of the State Legislature can impose such a tax.

AMENDMENTS.

In clause 11, section 55 states that the trustee of a math shall keep regular accounts of the receipts of 'pathakanika'. This is directly opposed to the decision of the Supreme Court,

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Dealing with the rights of the matadhipathis in respect of 'pathakanikas', the Supreme Court expressly states "If the 'pathakanika' constitutes the property of a mutt, there is no justification in compelling him to keep accounts of the receipts and expenditure of such personal gifts". But the section clearly does so. It is wrong to read the sentence in the Supreme Court decision as restricting the meaning to the keeping of accounts of both the receipts and expenditure and that it has no application to keep any accounts of the receipts alone. In clause 10 also, it is not necessary to introduce a new sub-clause (h). It is vague and it will lead easily in practice to blackmailing actions against heads of maths, the existence of such a clause is absolutely derogatory to the dignity and respect in which the heads of maths are regarded by the members of the religious denomination to which the maths belong. In section 76, the only change made in the present Bill is the substitution of the word "Commissioner" for "Government". I would suggest that in consonance with the reasons given in the Supreme Court decision for holding that the contribution payable under section 76 of Act XIX of 1951 is only a tax and not a fee, the amendment should be substituted the rate prescribed in proportion to the service rendered by Government and its officers to the particular institution by which such contribution is payable. Even assuming that this amendment is not accepted, I would suggest that the words 'not exceeding 5 per cent' should be substituted by the words 'not exceeding 3 per cent'. We find that a contribution of 3 per cent which was levied in the Act of 1951 and before the Act of 1951 yielded a surplus of 40 crores to the Government for a period of ten years. So the contribution ordinarily levied should be less than 3 per cent. Otherwise as the contribution will be in excess of the service rendered by the Government to the religious institution, it will partake of the nature of a tax and not a fee.

In clause 18, the only amendment proposed to be introduced is section 62 (a) exempting maths or other religious institutions having hereditary trustees who have a beneficial interest in the income of the institution. I feel that the whole Chapter VI of Act XIX of 1951 should be omitted as not applicable to all religious institutions including temples. According to the principle of the decision of the Supreme Court the appointment of an officer of a Government as the trustee of a religious institution who will have the power of managing even its religious affairs in accordance with the provisions of Chapter VI will be opposed to Articles 25 and 26 of the Constitution and it will therefore be void. The same reasoning which applies in the case of maths and hereditary trustees having a beneficial interest in the income will also apply to the case of other religious institutions. The Supreme Court clearly states when considering the validity of section 47, clause (3) of the Bombay Trusts Act 50 as follows:—

"We hold that the provisions of clause 6 to the extent they relate to the appointment of the Charity Commissioner as the Trustee of a Religious Trust like the temple and math are invalid." If the Charity Commissioner himself cannot be a trustee much more so, any officer appointed by him cannot be a trustee. The Supreme Court has made no difference between the hereditary trustee of a temple with the beneficial interest in the income and other trustees of temples.

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Articles 25 and 26 of the Constitution apply to Hindu temples belonging to the religious denomination such as Hindus or sects of Hindus and it is clear that Government has no powers to interfere with the management of religious affairs of these institutions. As Chapter VI contemplates, the appointment entirely replacing the trustees of temples of officers of their own, it will amount to interference in the management not only of secular affairs but also in the religious affairs of temples. I feel therefore that the whole Chapter VI relating to the notification of religious institutions should be omitted.

Subject to the above observations, I agree with the views of the majority.

MADRAS,
17th July 1954.

K. BALASUBRAMANIA AIYAR.

